Supreme Court of the United States

OCTOBER TERM, 1968

No. 641

REYES ARIAS OROZCO,

Petitioner,

—v.—

TEXAS,

Respondent.

ON WRIT OF CERTIORARI TO THE
COURT OF CRIMINAL APPEALS OF TEXAS

INDEX

BAIL STATUS: A. P. BOND

TRIAL DOCKET — CRIMINAL DISTRICT COURT — DALLAS COUNTY, TEXAS

C-6

STATE OF TEXAS	ATTORNEYS	OFFENSE
REYES ARIAS OROZCO	Mike Barclay	Murder with malice, as charged in the indictment MURDER WITH MALICE, AS CHARGED IN THE INDICTMENT
	A. P. BOND $2500 1-15-66	

DATE OF ORDER	ORDERS OF COURT
APR 4 - 1966	To the jury [illegible]
APR 25 1966	" " " [illegible]
MAY 9 - 1966	Reset to May 23rd
MAY 23 1966	Passed [illegible]
JUN 13 1966	" [illegible]
JUL 18 1966	Passed [illegible]
AUG - 8 1966	" to [illegible]
AUG 22 1966	Motion filed by state waiving death penalty; Both sides ready for trial; Jury panel of 45 called & 12 jurors selected & sworn; Deft. arraigned & pleads not guilty
AUG 23 1966	Charge & argument; Jury verdict of Guilty as [illegible] Jury is not required to set punishment; [illegible] the punishment at 10 years in Texas Penitentiary; probation denied; Motion for new [illegible] (over)

REC[illegible]
NOV
OFFICE O[illegible]
SUPREME[illegible]

TRIAL DOCKET — CRIMINAL DISTRICT COURT — DALLAS COUNTY, TEXAS

C-66-1828 LH

No.

FORM 595 REV.

BOND

AS	ATTORNEYS	OFFENSE	DATE OF FILING
OZCO	Mike Barclay	Murder with malice, as charged in the indictment MURDER WITH MALICE, AS CHARGED IN THE INDICTMENT	MAR 21 1966
	A. P. BOND $2500 — 1-15-66		

ORDERS OF COURT

To the [illegible]

Reset to Nov 23rd

Passed for deft to [illegible]

[illegible]

Passed [illegible]

" to [illegible]

RECEIVED
NOV 16 1968
OFFICE OF THE CLERK
SUPREME COURT, U.S.

Motion filed by State waiving death penalty;
Both sides ready for trial; jury panel of 45 called & examined
& 12 jurors selected & empaneled & sworn; deft. arraigned &
plead "not guilty"
Charge; argument; Jury verdict of Guilty as charged;
Jury is not required to set punishment; the court
sets the punishment at 10 years in Texas State
Penitentiary; probation denied; motion for new trial is filed
(over)

STATE OF TEXAS

vs. No.______________

DATE OF ORDER	ORDERS OF COURT
	Defendant waives the 10 days for sentencing & is to not less than 2 yrs more than 10 yrs in Texas State Penitentiary at Huntsville as [illegible] the court. Deft excepts & gives notice of appeal to the Court of Criminal Appeals of Texas at Austin. Bail fixed at 7500.

XAS

R

ORDERS OF COURT

Defendant waives the 10 days for sentencing & is sentenced to not less than 2 yrs nor more than 10 years in Texas State Penitentiary, to abide action of the court. Deft. excepts & gives notice of appeal to the Court of Criminal Appeals of Texas at Austin, Tex. Bail fixed at $7500.

* * * *

IN THE CRIMINAL DISTRICT COURT
OF DALLAS COUNTY, TEXAS

No. C-66-1228-LH

COURT CHARGE ON CIRCUMSTANTIAL EVIDENCE

This is a case depending for conviction on circumstantial evidence. In order to warrant a conviction of a crime on circumstantial evidence, each fact necessary to the conclusion sought to be established must be proved by competent evidence, beyond a reasonable doubt; all the facts (that is, the facts necessary to the conclusion) must be consistent with each other and with the main fact sought to be proved, and the circumstances, taken together, must be of a conclusive nature, leading, on the whole, to a satisfactory conclusion and producing, in effect, a reasonable, and moral certainty that the accused, and no other person, committed the offense charged.

But in such cases it is not sufficient that the circumstances coincide with, account for and therefore render probable, the guilt of the defendant. They must exclude, to a moral certainty, every other reasonable hypothesis except the defendant's guilt, and unless they do so, beyond a reasonable doubt, you will find the defendant not guilty.

* * * *

CRIMINAL DISTRICT COURT
OF DALLAS COUNTY, TEXAS

JULY TERM, A. D. 1966

No. C-66-1228-LH

THE STATE OF TEXAS

vs

REYES ARIAS OROZCO

MINUTES—August 23 A. D. 1966

The Defendant having been indicted in the above entitled and numbered cause for the offense Murder with Malice, as charged in the indictment a capital felony, and this day this cause being called for trial, the State appeared by her Criminal District Attorney, and the Defendant Reyes Arias Orozco appeared in person, his counsel also being present, and both parties announced ready for trial, and the Criminal District Attorney having made known to the Court in writing that the State would not seek the death penalty in the trial of this said cause. The said Defendant in open Court was duly arraigned, and pleaded Not Guilty to the charge contained in the indictment; herein; thereupon a jury, to-wit: Charles W. Worley and eleven others, was duly selected, impaneled and sworn, who, having heard the indictment presented, and the Defendant's plea of not guilty thereto, and having heard the evidence submitted, and having been duly charged by the Court, as to their duty to determine the guilt or innocence of the Defendant, and after having heard the arguments of counsel, retired in charge of the proper officer to consider of their verdict, and afterward were brought into open Court, by the proper officer, the Defendant and his counsel being present, and in due form of law returned into open Court, the following verdict, which was received by the Court, and is here now entered upon the minutes of the Court, to-wit:

We, the jury, find the defendant guilty of murder with malice as charged in the indictment.

/s/ CHARLES W. WORLEY,
Foreman

It is therefore considered and adjudged by the Court, that the said Defendant is guilty of the offense of Murder with Malice as charged in the indictment, as found by the jury, and no further evidence being heard by the Court, it is further adjudged by the Court that Defendant be punished, as has been determined by the Court, by confinement in the Texas Department of Corrections for 10 years, and that the State of Texas do have and recover of the said Defendant all costs in this prosecution expended, for which execution will issue; and that said Defendant is remanded to the Sheriff of Dallas County to await the further order of the Court herein.

/s/ J. FRANK WILSON
Judge
Criminal District Court
of Dallas County, Texas

ENDORSEMENT ON INSTRUMENT NO. C-66-1228-LH
Judgment

The State of Texas vs. Reyes Arias Orozco
Recorded: Vol 6 Pg 269, Minutes, Criminal District Court No. of Dallas County, Texas.

* * * *

CRIMINAL DISTRICT COURT
OF DALLAS COUNTY, TEXAS

No. C-66-1228-LH

THE STATE OF TEXAS

vs.

REYES ARIAS OROZCO

SENTENCE—August 23, 1966

Murder with Malice, as charged in the indictment.

This Day this cause being again called, the State appeared by her Criminal District Attorney, and the Defendant, Reyes Arias Orozco appeared in open Court in person, in charge of the Sheriff, for the purpose of having sentence of the law pronounced in accordance with the verdict and judgment herein rendered and entered against him at a former time; and thereupon the said Defendant, was asked by the Court whether he had anything to say why said sentence should not be pronounced against him, and he answered nothing in bar thereof, whereupon the Court proceeded, in the presence of the said Defendant, his counsel also being present, to pronounce sentence against him, as follows:

IT IS THE ORDER OF THE COURT, that the said Defendant, who has been adjudged to be guilty of Murder with Malice as charged in the indictment, as found by the jury, and whose punishment has been assessed by the Court at confinement in the Texas Department of Corrections for 10 years, be delivered by the Sheriff of Dallas County, Texas, immediately, to the Director of the Texas Department of Corrections, or other person legally authorized to receive such convicts, and said Defendant shall be confined in said Texas Department of Corrections, for not less than 2 nor more than 10 years years, in accordance with the provisions of the law governing the Texas Department of Corrections of said State, and the said Defendant is remanded to jail until said Sheriff can obey

the direction of this sentence. Defendant gave notice of appeal to Court of Criminal Appeals in Austin.

/s/ J. FRANK WILSON
Judge
Criminal District Court
of Dallas County, Texas

ENDORSEMENT ON INSTRUMENT: Sentence

The State of Texas vs. Reyes Arias Orozco
Recorded: Vol 6 Pg 269, Minutes, Criminal District Court of Dallas County, Texas.

* * * *

[fol. 34]

IN THE CRIMINAL DISTRICT COURT
OF DALLAS COUNTY, TEXAS

No. C-66-1228-LH

STATEMENT OF FACTS

Testimony of Dr. Earl Forrest Rose

* * * *

Q All right, would you mark this?

(State's Exhibit No. 1 was marked for identification purposes.)

Q I'll show you what's been marked as State's Exhibit No. 1 and ask you to tell the jury what that is?

A This is the missile that I removed from the body identified to me as John Hugh Elliott. My Medical Legal Autopsy No. 7, 1966.

MR. CAPERTON: We offer this into evidence at this time.

THE COURT: Objections?

MR. BARCLAY: If the Court please, at this time I would make an objection to the offering of this into evidence at this time. I don't have any objections to him calling this witness out of order but I don't believe he had laid a proper predicate for the purpose of submitting this into evidence at this particular time.

MR. CAPERTON: The only purpose is to show that this is the bullet that was removed from the body and he's the only one that can testify to that.

THE COURT: Overrule the objection.

MR. BARCLAY: Exception.

[fol. 35] THE COURT: Admitted into evidence.

(Whereupon State's Exhibit No. 1 was admitted into evidence.)

Q How are you able to identify this bullet?

A I'm identifying it because of the marks I made on the bullet.

Q Okay, that's good enough. Then, were you able to, from your autopsy that you performed, to determine the cause of death of John Hugh Elliott?

A Yes, sir.

Q Would you tell the jury what that was?

A This was a gunshot wound of the abdomen.

MR. CAPERTON: No further questions.

THE COURT: Cross examine.

* * * *

[fol. 75] C. W. BROWN,

a witness called by the State, after first being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CAPERTON:

Q Would you state your name for us, please, sir?

A C. W. Brown.

Q How are you employed?

A City of Dallas Police Department.

Q Were you a police officer for the City of Dallas back on January the 5th, 1966?

A Yes, sir, I was.

Q Who was your partner on that day?

A Blessing was my partner.

Q What were your hours of duty that night?

A Working from six until twelve.

[fol. 76] Q You're supposed to get off at twelve o'clock?

A Off at twelve.

Q Did you get off at twelve o'clock that night?

A No, we didn't.

Q What did you do that night?

A Well, we answered a call on McKinney, on Cedar Springs with a uniformed squad and I was working in the capacity as a plain-clothes officer with Mr. Blessing.

Q All right, was that at the El Farleto Cafe?

A Yes, sir.

Q Where did you go, if anywhere?

A We walked from that location, we went to Parkland Hospital and viewed the body at that location.

Q Whose body did you view there?

A It was a man that was a white man that's supposed to have gotten shot there and the ambulance had left and we left the El Farleto.

Q That's John Hugh Elliott's body?

A Yes, sir.

Q Was he alive or dead when you—

A —dead when we got to Parkland.

Q Where did you go from there, sir?

A We had a witness that had to go with the uniformed squad to Parkland Hospital, they were still at Parkland when we got there, it was an Indian man descent. He [fol. 77] showed us where another boy, and told us about another boy who had been at that location—

MR. BARCLAY: Object to that.

MR. CAPERTON: Don't go into anything.

THE COURT: Yeah.

Q Was that James Ishcomer?

A Yes, sir.

Q Did you talk to him?

A Yes.

Q Where did you go after that?

A We took him to another apartment and talked to the people there and then took him home from that location.

Q Okay, then where did you go, if anywhere?

A We found out who this other man was that was with the Defendant, where he lived, and we went to his home in Oak Cliff.

Q Was that Hosea Miramontes?

A Yes.

Q From his house where did you go?

A Came by town and came up Commerce and Akard and was going to show us where he let a girl out.

MR. BARCLAY: Objection. If the Court please, I'll have to make an objection to the conversation and fruits of the conversation.

THE COURT: He said he was going to show him or

[fol. 78] he was going to show them where he let a girl out, he didn't say nothing about what he said or nothing.

MR. BARCLAY: Exception.

Q (Continuing) That was Hosea Miramontes that you had in your car at that time?

A That's right.

Q From this location, did he show you a location?

A Yes, he did on Lemmon Avenue.

Q Okay, then what did you do after that?

A We took him, after he showed us the house, we took him over to the City Hall and booked him for investigation of murder, then we returned to the location on Lemmon Avenue that he pointed out to us.

Q All right, what did you do at that location on Lemmon Avenue?

A This was about four in the morning and we got to this location. Also, he pointed a car that this man was driving in the driveway and he said that that's the car that he was in.

MR. BARCLAY: Objection.

THE COURT: Sustain the objection.

Q Let's not go into anything he did, you later went into that house?

A Yes, sir, we returned to the location and knocked on the door—

[fol. 79] MR. BARCLAY: If the Court please, I'd like to make an objection now with reference to the testimony about going into this house and the probability of going into this house, could I have the witness on voir dire examination?

THE COURT: Yeah.

VOIR DIRE EXAMINATION

BY MR. BARCLAY:

Q Mr. Brown, at the time you arrived at this house on Lemmon Avenue, who was with you?

A With me, Mr. Blessing, my partner was the only one.

Q All right, was there any uniformed officers?

A We called for them later, yes, sir.

Q All right, they came after?

A They arrived shortly after we had gotten there; they were with us at the time of the arrest.

Q All right, now, at the time that you went to the house, did you have a warrant?

A No.

Q Did Mr. Blessing have a warrant?

A No, sir.

MR. BARCLAY: If the Court please, I'll have to make an objection now as to the, any further testimony with reference to the entrance of that particular dwelling on the grounds that the search and arrest at that particular [fol. 80] time would not be in accordance with the Code of Criminal Procedure.

MR. CAPERTON: Now, Your Honor, I haven't gone far enough, this is the first trip to the house and this is about four o'clock in the morning. I haven't gone far enough yet with my questions to get down—

THE COURT: Go ahead.

Q (By Mr. Caperton) At this time you didn't go into the house the first time you went there, is that right?

A No, sir, drove by that location.

Q Did you go get a warrant?

A No.

Q All right, when did you come back to the house?

A Immediately after we put the other boy in jail.

A All right,—

A Miramontes.

Q Did you go then back up to the house?

A Back to the location on Lemmon Avenue.

Q All right, whose house was it, if you know?

A I don't recall, the Defendant did live there.

Q Okay, do you recall the lady's name who lived there?

A (Witness nods head.)

Q Did you have a good reason to believe that a felony had been committed?

A Yes, sir.

[fol. 81] Q And—

MR. BARCLAY: Object to that, Your Honor, there's no predicate for that.

THE COURT: Overruled.

MR. BARCLAY: Exception.

Q (Continuing) And that the Defendant or suspect was there and there was a chance of his escaping?

A That's true.

Q All right.

MR. BARCLAY: Objection, no predicate.

THE COURT: Overruled.

MR. BARCLAY: Exception.

Q What did you do when you got to the house?

A Before we arrived at this house on this second street, my partner and myself, we called for a uniformed squad to meet us up there at that location. We had arrived there just about the same time, more or less, simultaneously, and we got out and told them what we had and we slipped up and so we went behind the house, some on the side and some to the front.

Q Did you go to the front or back?

A I went to the front.

Q What did you do when you got to the door?

A Knocked on the door and a lady came to the door. We identified ourselves as being police officers and wanted to talk to this man; ask if he was home and she said yes.

[fol. 82] MR. BARCLAY: Objection.

THE COURT: Overruled.

MR. BARCLAY: I'm going to make an objection—

THE COURT: —just a minute.

MR. BARCLAY: I'm going to make an objection to the conversation between the witness and the woman at the house on the grounds that it would be hearsay.

THE COURT: Was it in the presence of the Defendant?

A He was in bed asleep at that time, yes, Judge.

MR. CAPERTON: I won't go into that, Judge, I'll withdraw that question about what she said.

Q Then you went inside the house?

A We were invited in, yes, sir.

Q All right, what did you do after you got in?

MR. BARCLAY: If the Court please, I'm going to make an objection at this time to any further reference to the entrance of this particular house on the grounds that the testimony shows that the man was sound asleep

at that time and there is no good reason to show why he couldn't have gotten a warrant or warrant of arrest to search the premises.

THE COURT: Overruled.

MR. BARCLAY: Exception.

Q Okay, you may answer the question. What did you do after you got inside?

[fol. 83] A We walked in and the lady pointed to the room where this Defendant was asleep. He was awake when we got into the room and evidently heard the conversation, I don't know, but he was awake anyway.

Q Okay.

A And we asked him his name, I did. He told me.

MR. BARCLAY: Objection.

THE COURT: Overruled.

MR. BARCLAY: If the Court please, at this particular time, I'm going to make an objection to any line of questioning with reference to any conversation between this particular witness and the Defendant, could I have him on voir dire examination?

THE COURT: Not at this time, you can cross examine him.

MR. BARCLAY: Objection.

THE COURT: Overrule the objection.

MR. BARCLAY: Exception.

Q What name did he give you, do you see him in the courtroom?

A Yes, I see—no, it's been a long time and I don't recall. I haven't had a chance to go over my notes, I don't recall the names involved in this. I do remember the Defendant, the last man on the left down here at your table.

Q That's the man?

[fol.84] A That's the man that I had my conversation with and I don't remember his name, I remember the incident but the name I don't recall now. I haven't had a chance to look over my notes.

Q About what time of day was this?

A That I talked to him?

Q Yeah.

A That was around, well, after four o'clock, it was around four o'clock, give or take thirty minutes.

Q Okay, now, what did you say, if anything, to him besides, "What's your name?"

A Yes, I don't recall all the conversation, I asked him his name and he told me and I asked him if he had been out to the El Farleto that night.

MR. BARCLAY: Objection.

THE COURT: Overruled.

MR. BARCLAY: Could I have the witness on voir dire examination?

THE COURT: No.

MR. BARCLAY: Exception.

THE COURT: Go ahead.

THE WITNESS: He said he had. I asked him if he owned a pistol.

MR. BARCLAY: Objection.

THE COURT: Overruled.

[fol. 85] MR. BARCLAY: Exception.

THE WITNESS: He said yes. I said, "Where is it," and he didn't answer at first. Then I asked him again, he say, "It's in the back in the washing machine."

Q (Continuing) Okay, did you go back to the washing machine?

A Yes, I asked him where the washing machine was and he pointed to a little small room in the back of the house.

Q I'll show you what's been marked for identification purposes as State's Exhibit No. 3 and 4 and ask you if you can identify these and, if so, how?

A Yes, sir, we went back to the back room, or I did, and there was a bunch of clothes in a wringer type washing machine. I took some of the clothes out, I didn't see the pistol at first. The washing machine was just about full of clothes so he came back about that time, I'll say he, the Defendant, and he was going to show us where it was so I uncovered it some more, the clothes, and took them out of the washing machine and I saw the pistol then, and I told him I would get it. This is the pistol that was taken from the washing machine by myself about 4:30 in the morning.

Q What did you do with it after you took it out of the washing machine?

A I checked it and unloaded it.

MR. BARCLAY: If the Court please, I'm going to [fol. 86] make an objection on the grounds that the testimony is unresponsive to the question. He asked him if he could identify it then he asked him if he could identify it in what manner and how.

MR. CAPERTON: He said he could, then I asked him what he did with it—how could you identify it again?

A By markings that we have.

Q You marked on it yourself?

A Yes, sir, I have a B right here.

Q All right, now, what did you do with it after you left the house?

A We brought it to the City Hall and put it in our Police Property Room.

Q All right, tell the jury what place in the Police Property Room you put it?

A It's in the basement of the City Hall. We take it down there, at that time of the morning out identification or Crime Lab is not open at that time. We put it in there and mark it as evidence and the people who come on duty from the laboratory the next morning, they go down and check the property out with whatever kind of analysis, whatever it might be.

Q Did you ask for any type of analysis on this pistol?

A Yes, we did.

Q What type was that?

A Ballistics type analysis that we send to Parkland [fol. 87] Hospital.

Q All right, now, is the tag on State's Exhibit No. 4 the tag that you placed on there?

A Yes, this is the same tag, this is my writing here.

Q And that's the same pistol that you picked up?

A Yes, it is. I had marked it here at the time I got it. I marked it in the living room of the home where he was arrested.

MR. CAPERTON: Okay, that's all the question I have.

THE COURT: Cross examine.

CROSS EXAMINATION

BY MR. BARCLAY:

Q Mr. Brown, at the time you walked into the bedroom there where the Defendant was in bed, was he free to come and go at that time?

A As far as we were concerned, all I wanted to know was his name.

Q I see, when you ascertained his name, was he free to leave?

A No.

Q So, all right, so during the time that you had this conversation with him pertaining to the gun, he was under arrest, is that correct?

A Yes. After I found out his name.

MR. BARCLAY: All right, now, at this time, we'll [fol. 88] object to any testimony with reference to any conversation pertaining to this particular gun or any conversations with reference to any subject matter between the witness and the Defendant at that particular time on the grounds that the State has failed to lay a proper predicate; further object to the manner and method in which the arrest and search was perfected; and further on the grounds that it fails to meet with the provisions outlined by the Code of Criminal Procedure; and furthermore, specifically, on the grounds that the Prosecution has failed to provide testimony to show that the police department obtained a search warrant or warrant of arrest at that particular time.

THE COURT: Overruled.

MR. BARCLAY: Exception.

THE COURT: Any questions?

MR. BARCLAY: That's all.

MR. CAPERTON: No further questions.

* * * *

[fol. 92] Testimony of F. T. Alexander

BY MR. CAPERTON:

Q (Continuing) Your duties in regard to the missile in the box marked State's Exhibit No. 1 and the pistol and clip that you received, you were to see if that missile had been fired from that weapon, is that right?

A That's right, yes, sir.
Q And could you make a determination in this case?
A I could.
Q How did you go about making your determination?
A I test fired the gun and recovered the bullet in the bullet recovery box, then I checked the number of lanes and grooves of each of them which then I made a microscopic examination of the evidence bullet against the test bullet fired through this gun.
Q All right, did you fire more than one bullet through the gun?
A Yes, sir, I fired several through it.
Q Tell the jury how you recovered these bullets that you fired through—
A I fired the gun into a bullet recovery box which is full of cotton waste, then I have it divided up into sections; there is a small paper card between each section, then I look for the last paper card that the bullet has [fol. 93] gone through and I recovered it in the waste and in that area.
Q Then the comparison was made by you?
A Yes, sir.
Q And your testimony here is then that the evidence bullet in State's Exhibit No. 1 and the test bullet fired through the weapon came from the same gun?
A Yes, sir.
Q That would be State's Exhibit No. 4?
A No. 3.
Q No. 3, okay.
A Yes, sir.

* * * *

[fol. 119] CLOSING JURY ARGUMENTS

MR. REESE: I think at that point he couldn't bring himself or he wouldn't do it, he wouldn't tell you that he saw this Defendant shoot him. He said the Defendant then got in the car and that they drove off; that he saw a pistol in the car all right on the seat. Before they got in the car initially, I believe that Hosea said he had gotten in the car and there was nothing about any pistol being on the seat when he got in the car, so it must have

been put on the seat after all this occurred, after the shooting occurred. He did say that the pistol that we showed you was not the one that he saw on the seat and I submit to you that that's not true. There's only one place the pistol could have come from and that's from the Defendant and sure enough C. W. Brown went to the Defendant's house and asked him if he had a pistol and he said yeah, asked him if he wasn't at the cafe, yes, he was there, asked him where the pistol was and they went to the washing machine. He didn't have it where someone ordinarily keeps a pistol, he had it stuck down under some clothes in the washing machine. So they recovered the pistol, eventually got it out to the Crime Laboratory and Lieutenant Alexander examined it and made some test firings and, sure enough, the bullet that killed John Hugh Elliott came from the pistol owned by this—

MR. BARCLAY: —If the Court please, I'm going to [fol. 120] make an objection to that line of argument about that particular pistol since it was not offered into evidence.

THE COURT: Overruled.

MR. BARCLAY: Exception.

MR. REESE: We can not, at this time, go into why the pistol was not introduced into evidence. At any rate, you know that is what occurred, whether or not the pistol is sitting here in front of you or not. These people tell you what they did; they recovered this Defendant's weapon from his house, hidden in his house; that's the weapon that fired the fatal bullet, there's no question about it. Now, you must decide this case on the evidence presented from the witness stand.

THE COURT: Eight minutes.

* * * *

[fol. 131] MR. CAPERTON: —* * * There's no self-defense charge in this charge, gentlemen, there is not a word about self-defense in this charge because it's not raised by the evidence, but the only thing he said was, "Let's go." All right, does an innocent man hide, does he go home and hide a pistol down under a bunch of clothes in a washing machine? No, sir! * * *

* * * *

IN THE COURT OF CRIMINAL APPEALS OF TEXAS AT AUSTIN

No. 40,706

REYES ARIAS OROZCO, APPELLANT

vs.

THE STATE OF TEXAS, APPELLEE

Appeal from Dallas County

OPINION—December 6, 1967

The offense is murder with malice; the punishment, 10 years.

Trial was before a jury on a plea of not guilty. The state having waived the death penalty and the jury having found appellant guilty of murder with malice, the court assessed the punishment.

The facts necessary for consideration and disposition of the grounds of error set forth in appellant's brief, filed in the trial court, reflect the following: Appellant was seated in a booth near the front door of the El Farleto Cafe in Dallas with Hosea Miramontes and Joanne Parris when John Hugh Elliott, the deceased, came in and sat in a booth some six feet away. After eating his food and having some conversation with Joanne, the nature of which is not disclosed, the deceased left the cafe.

Shortly after that appellant and Joanne left, as did Miramontes. An argument ensued and deceased, who had gotten in his car and was driving away, pulled back into the parking place alongside of the Miramontes car and, according to the testimony of Miramontes, the deceased beat appellant about the face with his hands and called him "Mexican Grease." A shot was fired and Miramontes drove Joanne and appellant from the scene and, after letting appellant out, drove Joanne to the corner of Commerce and Akard and let her out.

James Ishcomer, referred to as an Indian man, and his companions, who left the cafe about ten minutes later,

found Elliott, the deceased, slumped over the steering wheel of his car and thought that "a little mickey" had been put in his drink and that he was drunk, but when they raised him up they saw a bullet hole; took him out of the car and attempted to revive him by mouth to mouth artificial respiration.

Patrolman J. W. Johnson, of the Dallas Police Department, testified that while on duty on the late night shift on January 5, 1966, with another officer, he noticed 5 or 6 persons standing on the sidewalk on the west side of Cedar Springs, where there was a car with the door open. When these people saw the squad car they began to wave, and he noticed that there was a man lying in the parking area with one leg inside a Ford station wagon. Those standing by said they thought he was drunk, but "when we went to this gentleman laying on the ground and found he wasn't drunk but he had been shot—we called for an ambulance" and "for a detective squad, supervisor and crime lab."

"Q. I guess the Crime Lab is the one that made the picture?

"A. Yes, sir.

"Q. Okay, now, did you stay there at the scene or did you leave?

"A. No, sir, we stayed there, we tried to get all the witnesses, anyone that knew anything about it. We tried to get them to one side, they left before we got the information that we needed.

"Q. Were there any witnesses out there actually?

"A. Yes, sir, there were witnesses, I don't know whether they were the ones on the direct shooting because I didn't question any of the witnesses, detectives questioned the witnesses.

"Q. That's what I meant, was there any witnesses to the shooting itself? Was James Ishcomer one of the men that was out there?

"A. Yes, sir, the Indian.

- - - -

"Q. Did anyone show up from the Homicide Bureau?

"A. Yes, sir.

"Q. Who were the detectives in the Homicide Bureau?

"A. I believe it was Detective Blessing and Charlie Brown."

Patrolman Jerry C. Scarbrough testified that he was one of the arresting officers; that Officer Stubbs rode with him and they with two Homicide detectives, one of whom was Charlie Brown and the other a detective he did not know personally, went to "a private residence" on Lemmon Avenue arriving about the same time; that he went to the back of the house and the other officers went to the front; that he later went inside the house and was in the back room when the pistol was found in the washing machine.

We quote from the testimony of state's witness Brown:

"Q. Were you a police officer for the City of Dallas back on January the 5th, 1966?

"A. Yes, sir, I was.

"Q. Who was your partner on that day?

"A. Blessing was my partner.

"Q. What were your hours of duty that night?

"A. Working from six until twelve.

"Q. You're supposed to get off at twelve o'clock?

"A. Off at twelve.

"Q. Did you get off at twelve o'clock that night?

"A. No, we didn't.

"Q. What did you do that night?

"A. Well, we answered a call on McKinney, on Cedar Springs with a uniformed squad and I was working in the capacity as a plain-clothes officer with Mr. Blessing.

"Q. All right, was that at the El Farleto Cafe?

"A. Yes, sir.

"Q. Where did you go, if anywhere?

"A. We walked from that location, we went to Parkland Hospital and viewed the body at that location.

"Q. Whose body did you view there?

"A. It was a man that was a white man that's supposed to have gotten shot there and the ambulance had left and we left the El Farleto.

"Q. That's John Hugh Elliott's body?

"A. Yes, sir.

"Q. Was he alive or dead when you—

"A. —dead when we got to Parkland.

"Q. Where did you go from there, sir?

"A. We had a witness that had to go with the uniformed squad to Parkland Hospital, they were still at Parkland when we got there, it was an Indian man descent. He showed us where another boy, and told us about another boy who had been at that location—

"MR. BARCLAY: Object to that.

"MR. CAPERTON: Don't go into anything.

"THE COURT: Yeah.

"Q. Was that James Ishcomer?

"A. Yes, sir.

"Q. Did you talk to him?

"A. Yes.

"Q. Where did you go after that?

"A. We took him to another apartment and talked to the people there and then took him home from that location.

"Q. Okay, then where did you go, if anywhere?

"A. We found out who this other man was that was with the Defendant, where he lived, and we went to his home in Oak Cliff.

"Q. Was that Hosea Miramontes?

"A. Yes.

"Q. From his house where did you go?

"A. Came by town and came up Commerce and Akard and was going to show us where he let a girl out.

- - - -

"Q. That was Hosea Miramontes that you had in your car at that time?

"A. That's right.

"Q. From this location, did he show you a location?

"A. Yes, he did on Lemmon Avenue.

"Q. Okay, then what did you do after that?

"A. We took him, after he showed us the house, we took him over to the City Hall and booked him for investigation of murder, then we returned to the location on Lemmon Avenue that he pointed out to us.

- - - -

"Q. (By Mr. Caperton) At this time you didn't go into the house the first time you went there, is that right?

"A. No, sir, drove by that location.

"Q. Did you go get a warrant?
"A. No.
"Q. All right, when did you come back to the house?
"A. Immediately after we put the other boy in jail.
"Q. All right,—
"A. Miramontes.
"Q. Did you go then back up to the house?
"A. Back to the location on Lemmon Avenue.
"Q. All right, whose house was it, if you know?
"A. I don't recall, the Defendant did live there.
"Q. Okay, do you recall the lady's name who lived there?
"A. (Witness nods head.)
"Q. Did you have a good reason to believe that a felony had been committed?
"A. Yes, sir.

- - - -

"Q. (Continuing) And that the Defendant or suspect was there and there was a chance of his escaping?
"A. That's true.
"Q. All right.
"MR. BARCLAY: Objection, no predicate.
"THE COURT: Overruled.
"MR. BARCLAY: Exception.
"Q. What did you do when you got to the house?
"A. Before we arrived at this house on this second street, my partner and myself, we called for a uniformed squad to meet us up there at that location. We had arrived there just about the same time, more or less, simultaneously, and we got out and told them what we had and we slipped up and so we went behind the house, some on the side and some to the front.
"Q. Did you go to the front or back?
"A. I went to the front.
"Q. What did you do when you got to the door?
"A. Knocked on the door and a lady came to the door. We identified ourselves as being police officers and wanted to talk to this man; ask—if he was home and she said yes.

- - - -

"Q. Then you went inside the house?

"A. We were invited in, yes, sir.

"Q. All right, what did you do after you got in?

"MR. BARCLAY: If the Court please, I'm going to make an objection at this time to any further reference to the entrance of this particular house on the grounds that the testimony shows that the man was sound asleep at that time and there is no good reason to show why he couldn't have gotten a warrant or warrant of arrest to search the premises.

"THE COURT: Overruled.

"MR. BARCLAY: Exception.

"Q. Okay, you may answer the question. What did you do after you got inside?

"A. We walked in and the lady pointed to the room where this Defendant was asleep. He was awake when we got into the room and evidently heard the conversation. I don't know, but he was awake anyway.

"Q. Okay,

"A. And we asked him his name, I did. He told me.

"MR. BARCLAY: Objection.

"THE COURT: Overruled.

"MR. BARCLAY: If the Court please, at this particular time, I'm going to make an objection to any line of questioning with reference to any conversation between this particular witness and the Defendant, could I have him on voir dire examination?

"THE COURT: Not at this time, you can cross examine him."

- - - -

"Q. About what time of day was this?

"A. That I talked to him?

"Q. Yeah.

"A. That was around, well, after four o'clock, it was around four o'clock, give or take thirty minutes.

"Q. Okay, now, what did you say, if anything, to him besides 'What's your name?'

"A. Yes, I don't recall all the conversation, I asked him his name and he told me and I asked him if he had been out to the El Farleto that night.

"MR. BARCLAY: Objection.

"THE COURT: Overruled.

"MR. BARCLAY: Could I have the witness on voir dire examination?

"THE COURT: No.

"MR. BARCLAY: Exception.

"THE COURT: Go ahead.

"THE WITNESS: He said he had. I asked him if he owned a pistol.

"MR. BARCLAY: Objection.

"THE COURT: Overruled.

"MR. BARCLAY: Exception.

"THE WITNESS: He said yes. I said, 'Where is it,' and he didn't answer at first. Then I asked him again, he says, 'It's in the back in the washing machine.'

"Q. (Continuing) Okay, did you go back to the washing machine?

"A. Yes, I asked him where the washing machine was and he pointed to a little small room in the back of the house.

"Q. I'll show you what's been marked for identification purposes as State's Exhibit No. 3 and 4 and ask you if you can identify these and, if so, how?

"A. Yes, sir, we went back to the back room, or I did, and there was a bunch of clothes in a wringer type washing machine. I took some of the clothes out, I didn't see the pistol at first. The washing machine was just about full of clothes so he came back about that time, I'll say he, the Defendant, and he was going to show us where it was so I uncovered it some more, the clothes, and took them out of the washing machine and I saw the pistol then, and I told him I would get it. This is the pistol that was taken from the washing machine by myself about 4:30 in the morning.

"Q. What did you do with it after you took it out of the washing machine?

"A. I check it and unloaded it."

The pistol referred to in the testimony of Officer Brown was shown by the evidence to have been the gun from which the bullet which killed the deceased was fired.

Appellant's first and principal ground of error is:

> "The arrest of the defendant without warrant and without probable cause rendered evidence seized from private residence of defendant in a warrantless search inadmissible."

Assuming that no warrant of arrest had been issued, we do not agree that the arrest was unlawful or that the pistol, the only evidence seized, was obtained as the result of an unlawful search or that the pistol was seized from the private residence of appellant.

A number of police officers participated in searching for those who fled the scene leaving the dying man near the cafe. They received information from Ishcomer and then from Miramontes which led them to the private residence of a lady whose name Officer Johnson did not recall, or did not give, where appellant had a room. They were admitted to the house by a lady who answered their knock and said that he was in his room asleep. They made no unlawful entry into the house, but were invited in.

Contemporaneous with the arrest Officer Brown asked appellant his name; if he had been out to the El Farleto Cafe that night; if he owned a pistol; and "where is it?" in answer to which questions appellant gave his name, answered the next two questions in the affirmative and the last: "It's in the back in the washing machine." Appellant then pointed out to the officers a small room in the back of the house where the washing machine was, and he was there when Officer Brown uncovered the pistol, checked it and unloaded it.

While such is argued, the ground of error does not complain that these statements of appellant should have been excluded for lack of warning required by Escobedo v. Illinois, 378 U.S. 478, 12 L. Ed. 2d 977, 84 S. Ct. 1758, and Miranda v. Arizona, 384 U.S. 436, 16 L. Ed. 2d 694, 86 S. Ct. 1602, cited by appellant, but complain of evidence seized as a result of an unlawful arrest without warrant.

Miranda v. Arizona, and Escobedo v. Illinois, supra, apply to in-custody interrogation without regard to wheth-

er the arrest was unlawful but do not protect the accused to the extent that no inquiry at all is permissible without prior warning.

For a discussion of "custodial interrogation" under the doctrine of Miranda v. Arizona, supra, see Gaudio v. State, 230 A. 2d 700, 1 Md. 455.

There is no doubt that the statements of appellant were made contemporaneous with his arrest and that the officers went to the house for the purpose of arresting him, and did arrest him as soon as they satisfied themselves that he was the man that was named by Miramontes. In fact the state offered testimony of another police officer (Scarbrough) to the effect that he was one of the arresting officers and that they went to the house for the purpose of executing a warrant which he had seen but which was not in his possession.

We hold that the further inquiry which led to the finding of the pistol was not precluded under Miranda v. Arizona, supra.

We are not impressed with the contention that Warden v. Hayden, —— U.S. ——, 18 L. Ed. 2d 782, 87 S. Ct. ——, may be distinguished by the fact that it required more than three hours for the officers to find appellant whereas, in Warden v. Hayden, supra, information was immediately relayed to the police by cab drivers who followed the robber from the scene and the police immediately proceeded to the house where they found the defendant, asked him to get out of bed and get dressed and arrested him, and within one hour of their entry into the house, found a sawed off shotgun in the flush tank of the commode in the bathroom, and a sweater and cap similar to those that the robber had reportedly been wearing.

Warden v. Hayden, supra, supports our conclusion that the officers acted reasonably when they entered the house in search of the man whose name they had been given and for the pistol he had used to shoot the deceased.

In the recent case of U.S. v. Agy, 374 Fed. 2d 94, the defendant, when encountered by federal agents and questioned as to the contents of a truck, made an incriminating admission which was corroborated by an immediate search. The Court of Appeals held that it was unneces-

sary to determine whether probable cause for the search existed in the absence of the defendant's admission; that the agents could testify as to the contents of the truck and the admissions of the defendant need not have been excluded.

Agy was cited by this court in Sutton v. State, No. 40,544, decided on rehearing November 1, 1967.

In Galloway v. State, No. 40,604, decided October 18, 1967, the defendant stated to the officers who were invited into the house, and who inquired of him where the pistol was he had used in the shooting the night before, that it was in his house, and handed the pistol to the officers. This court overruled the contention that such evidence was procured as the result of an unlawful arrest. Hinkley v. State, 389 S.W. 2d 667, was cited in support of such holding.

Appellant's next ground of error is that the court erred in permitting the state to claim surprise and impeach a state's witness without laying a proper predicate for such claim of surprise.

This claim of error relates to the witness Miramontes who testified that he did not see Shorty (referring to appellant) shoot the deceased but heard a shot. He was then asked by counsel for the state, and answered over the objection set out:

"Q. Do you remember the Assistant District Attorney that was present at that examining trial ask you if, 'Did you see a man get shot on that evening—

"MR. BARCLAY: If the Court please, I'm going to object to the District Attorney trying to impeach his own witness.

"THE COURT: You plead complete surprise or not?

"MR. CAPERTON: Yes, Your Honor, because he's testifying to something that he did not testify to at the examining trial.

"THE COURT: Overrule the objection.

"Q. (Continuing) Did the Assistant District Attorney ask you the question, 'Did you see a man get shot on that evening?'

"A. Yes, he asked me that question.

"Q. Do you remember your answer?

"A. I told him I heard a shot.

"Q. Was your answer to that question, "I saw a man get shot.'

"A. Yes, u-huh."

We find no harm or detriment to appellant in the testimony of the witness as to the question asked and the answer given by him at the examining trial.

In view of the objection and of the testimony elicited, the contention that no proper predicate was laid is overruled. Gauntt v. State, 335 S.W. 2d 616, 619; Cook v. State, 388 S.W. 2d 707, 709.

From all of the testimony of the witness Miramontes, it is apparent that he was aware of the fact at the time that appellant, who he testified had a pistol and was beaten by the deceased, fired the shot he heard.

The next ground of error relates to the argument of counsel for the state which it is contended referred to appellant's failure to testify.

The remarks complained of and the objection thereto are as follows:

> "We must base our case on circumstantial evidence if we do not have a confession, that is admissible, made by the Defendant or if there is no eye witness who is willing to testify to what he saw. If we don't have that eye witness who will give testimony or a confession, then the State in every criminal case must depend on circumstantial evidence. So, you can see, of course, that the law realizes that they will not say just because a man won't tell you what he saw or just because the Defendant won't confess that we can't try him.
>
> "MR. BARCLAY: If the Court please, I'm going to object to that line of argument. I believe he's commenting on the failure of the Defendant to testify.
>
> "THE COURT: Overruled.
>
> "MR. BARCLAY: Exception."

In his brief reference is made to the foregoing and to remarks objected to on other grounds or without stating any ground.

The complained of remarks above quoted were made in connection with the charge on circumstantial evidence and do not constitute a reference to the defendant's failure to testify in his own behalf.

Appellant's ground of error No. 4 relates to the failure of the trial court to give proper admonitory instructions or grant mistrial when counsel for the state argued that appellant carried a pistol and carried one into the cafe.

The remarks to which objection was addressed clearly reflect that counsel submitted as a reasonable deduction from the evidence that appellant had the pistol on him when he went in the cafe. We see no error.

The remaining claim of error relates to the denial of appellant's requested charge on self-defense.

The argument is advanced that appellant was entitled to his requested charge on self-defense against milder attack under Art. 1224 P.C.

No objections to the court's charge appear in the record.

The question of whether self-defense against a milder attack may be raised by circumstantial evidence or was raised in this case by the testimony of Miramontes is not before us.

The record contains a request for a charge on self-defense against an attack giving rise to a reasonable expectation or fear of death or serious bodily harm, which was properly denied since the evidence did not raise the issue.

We find no bill of exception or request for a charge on self-defense against a lesser attack in the record.

The judgment is affirmed.

WOODLEY,
Presiding Judge.

(Delivered December 6, 1967.)

* * * * *

DISSENTING OPINION—Delivered December 6, 1967

Appellant's first and principal ground of error should be sustained. The officers had no arrest or search warrant. It is clear that appellant was under arrest. The

following testimony by Officer Brown on cross examination was not set forth in the majority opinion:

"Q. I see, when you ascertained his name, was he free to leave?

A. No.

Q. So, all right, so during the time that you had this conversation with him pertaining to the gun, he was under arrest, is that correct?

A. Yes. After I found out his name."

This search cannot be justified under the rule announced by the Supreme Court of the United States in McDonald v. U.S., 335 U.S. 451, 93 L ed 153, 69 S. Ct. 191, and Warden v. Hayden, 1 Cr L 3059. In the case at bar four hours had elapsed from the time the officer began his investigation to the time of the arrest. In McDonald, supra, the Court said, "This guarantee of protection against unreasonable searches and seizures extends to the innocent and guilty alike."

To hold as the majority does would authorize coercive type warrantless entry of any citizen's bedroom at four o'clock in the morning by a number of armed police officers seeking information. This is and always has been prohibited by our Constitution.

This cannot be a case of invitation or consent because the identity of the lady who admitted the officers was not shown. The officer could not recall who lived at the address where the search was made. There was no testimony indicating that appellant himself invited the officers in or consented to the search. He was alone in bed when four officers came and began to ask him questions. Under such circumstances, consent to search cannot be inferred or presumed. It cannot be said that appellant volunteered the information about the whereabouts of the pistol, because the officer said that "he didn't answer at first." Then, "I asked him again."

The proper rule, as I view it, has been enunciated by the Supreme Court of California in People v. Stockman, 407 P 2d 277; People v. Charles, 425 P 2d 545; and People v. Doherty, 429 P 2d 177. It is that "the prosecution bears the burden of proving that the statement in

question was not the fruit of a forbidden interrogation." People v. Charles, supra. It is conceded that no warning was given in the case at bar, and therefore, the interrogation was forbidden because the Miranda warning was not given.

I respectfully dissent.

MORRISON,
Judge

(Delivered December 6, 1967)

* * * *

SUPREME COURT OF THE UNITED STATES

No. 68 Misc., October Term, 1968

REYES ARIAS OROZCO, PETITIONER

v.

TEXAS

On petition for writ of Certiorari to the Court of Criminal Appeals of the State of Texas.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted. The case is transferred to the appellate docket as No. 641 and placed on the summary calendar.

October 14, 1968

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 641

REYES ARIAS OROZCO,

Petitioner,

vs.

TEXAS,

Respondent.

BRIEF OF PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 641

REYES ARIAS OROZCO,

Petitioner,

vs.

TEXAS,

Respondent.

BRIEF OF PETITIONER

To the Honorable Justices of Said Court:

Citation to Opinion Below

The opinion of the Court of Criminal Appeals is not yet reported in a bound volume; it is Opinion No. 40,706 delivered December 6, 1967, and it appears verbatim in the appendix.

Jurisdiction

The judgment of the Court of Criminal Appeals was rendered on December 7, 1967. A Motion for Rehearing was overruled on February 7, 1968, and the judgment became final on that date. The jurisdiction of this court is invoked under 28 USC 1257(3).

Constitutional Provisions Involved

United States Constitution, Fourth Amendment:

> "The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or Affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

United States Constitution, Fifth Amendment:

> "No person . . . shall be compelled in any criminal case to be a witness against himself . . . ."

United States Constitution, Sixth Amendment:

> "In all criminal prosecution, the accused shall enjoy the right to . . . have the assistance of counsel for his defense."

United States Constitution, Fourteenth Amendment:

> "[N]or shall any state deprive any person of Life, Liberty, or Property, without due process of law . . . ."

Question Presented for Review

The question presented for review to this Honorable Court is that of the legality of the arrest, and search, and questioning, and subsequent admission into evidence during the course of the trial of statements made, physical objects seized, and results of tests performed on the illegally seized

object (a pistol). The petitioner was arrested after being awakened in his bedroom in a boarding house by four policemen who were standing around his bed, at which time he was interrogated concerning his whereabouts on the night in question and whether or not he owned a pistol. This on the scene interrogation took place without the petitioner being warned of his constitutional rights to remain silent or to cease discussion at any time or of his right to have an attorney present during his interrogation.

Statement of the Case

On January 5, 1966, a Dallas Police Department Patrolman noticed five or six persons standing on the sidewalk near a car with the door open (R. 47). When the patrolman stopped to investigate, he discovered the body of a man who had been recently shot in the head. The body was taken to the hospital and after investigation at the hospital, Dallas Police Detectives took one witness by the boarding house where the petitioner was living. The witness pointed out the automobile parked at the house as belonging to this petitioner. The police then took the witness downtown, booked him into the jail, and returned to the house the witness had pointed out. At this time, it was approximately 4:30 o'clock in the morning (R. 76, L. 22 to R. 78, L. 25). They knocked on the door and were admitted by a woman who was not identified at the trial (R. 81). They had no arrest warrant and no search warrant (R. 79). This petitioner was asleep in his room and after being awakened by the detectives and being interrogated in his bedroom stated that he had been at the scene of the shooting, and after first refusing to reply to the question of whether he owned a pistol or not, the petitioner, after persistent questioning by the four police officers that were

standing around his bed, then told the detectives that the pistol was in the washing machine, where it was found by the detectives (R. 84, L. 5 to R. 85, L. 24). Ballistics tests on the pistol revealed that it was the murder weapon (R. 92, L. 4 to R. 93, L. 14). This illegally seized evidence was then later used very effectively by the prosecution in their summation to the jury (R. 119, L. 12 to R. 120, L. 14 and R. 131, L. 15 to R. 131, L. 24).

The Argument

Excerpts from the record containing the testimony of Detective Brown on direct examination and cross examination show clearly the manner in which this petitioner's constitutional rights were first violated by in custody interrogation without warning and secondly, by the subsequent admission into evidence during the course of the trial of testimony concerning this petitioner's responses to the interrogation, physical objects seized, and ballistics tests performed upon the pistol.[1]

The following exchange took place during the voir dire examination of Detective Brown by Mr. Barclay, the petitioner's trial counsel:

> Q. Okay. You may answer the question: What did you do after you got inside?
>
> A. We walked in and the lady pointed to the room where this defendant was *asleep*. He was awake when we got into the room and he evidently heard the conversation. I don't know, but he was awake anyway.

[1] This testimony was especially damaging in view of the fact that prosecution's case depended entirely upon circumstantial evidence (see R. 9—Court's charge on circumstantial evidence).

Q. Okay.

A. *And we asked him his name—I did* (R. 82-82). (Emphasis added.)

Later upon cross examination by Mr. Barclay, Detective Brown testified as follows:

Q. Mr. Brown, at the time you walked into the bedroom there, where the Defendant was in bed, was he free to come and go at the time?

A. As far as we were concerned, all I wanted to know was his name.

Q. I see. When you ascertained his name, was he free to leave?

A. No.

Q. So, all right, so during the time that you had this conversation with him pertaining to the gun, he was under arrest. Is that correct?

A. Yes, *after I found out his name.* (Emphasis added.)

• • • • •

Q. *Mr. Barclay:* All right, now, at this time, we will object to any testimony with reference to any conversation pertaining to this particular gun or any conversation with reference to any subject matter between the witness and the defendant at that particular time on the grounds that the state has failed to lay a proper predicate; further object to the manner and method in which the arrest and search was perfected; and further, on the grounds that it fails to meet with the provisions outlined by the Code of Criminal Procedure; and furthermore, specifically, on the grounds that the prosecution has failed to provide testimony

to show that the police department obtained a search warrant or warrant of arrest at that particular time.[2]

The Court: Overruled.

Mr. Barclay: Exception.

As Detective Brown's testimony shows, this petitioner was under arrest from the moment he told the officers his

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[2] The legality of the arrest of your petitioner was very earnestly contested in the State Courts, based upon Article 14.04 of the Texas Code of Criminal Procedure: "Where it is shown by satisfactory proof to a peace officer that a felony has been committed, and that the offender is about to escape so *that there is no time to procure a warrant,* such peace officer may, without warrant, pursue and arrest the accused." (Emphasis added.) As the above testimony shows, your petitioner was in bed and asleep at the time of his arrest. Hardly a likely place for an offender who "is about to escape." Furthermore, the deputies had time to drive by your petitioner's boarding house with the witness taken from the hospital, continue to the Police Station and book the witness in and then return to the boarding house.

The following Texas cases have held that the requirement that the offender be about to escape is mandatory: *Rippy* v. *State,* 53 S.W. 2d 619 (CCA 1932) (In *Rippy,* the accused was partially undressed and in bed and the Texas Court of Criminal Appeals pointedly held that "that part of the statute which says that 'the offender is about to escape' is indispensable."); *Vinson* v. *State,* 137 S.W. 2d 1048 (Police officer arrested the accused at home in bed approximately six hours after the officer had been told to arrest the accused. In the process of making the illegal arrest the police officer noticed mud on the accused's shoes, which mud was significant at the subsequent trial. Admission of testimony concerning mud on the appellant's shoes by the police officer who made the illegal arrest was held to be error on the part of the trial court and the case was therefore reversed); *Tarwater* v. *State,* 267 S.W. 2d 410 (Sheriff entered the accused's room without a search warrant and discovered a torn up forged check in the commode. He also found the accused hiding under the bed. The search was made without a search warrant and the court found that the accused was not about to escape and there was no showing that there was not sufficient time to procure a warrant of arrest. The court relied upon *Rippy* v. *State, supra,* and stated that "the only distinction in that case and in this case upon the question mentioned is that, here, appellant was under the bed and not in it").

name. Testimony also shows that this was the first question asked by Detective Brown when he and the three other detectives entered the sleeping petitioner's bedroom at 4:30 in the morning. The testimony further shows that even though the petitioner was under arrest at this time, as stated by Officer Brown, the questioning continued:

Q. Okay, now what did you say to him if anything besides, "What's your name?"

A. Yes. I don't recall all the conversation, I asked him his name and he told me and I asked him if he had been out to the El Farleto (the scene of the shooting) that night.

Mr. Barclay: Objection.

The Court: Overruled.

Mr. Barclay: Could I have the witness on voir dire examination?

The Court: No.

Mr. Barclay: Exception.

The Court: Go ahead.

A. He said that he had. I asked if he owned a pistol.

Mr. Barclay: Objection.

The Court: Overruled.

Mr. Barclay: Exception.

A. He said, "Yes". I said, "Where is it?", *and he didn't answer at first. Then I asked him again.* He said, "It's in the back in the washing machine." (Emphasis added.)

Q. (continuing) Okay, did you go back to the washing machine?

A. Yes. I asked him where the washing machine was and he pointed to a little small room in the back

of the house. (The gun upon which ballistics tests were later performed by the Police Department was recovered from the washing machine at this time) (R. 84-85).

Thus, the police arrested this petitioner, gave him no warnings of any kind as required by the Supreme Court cases of *Escobedo* v. *State of Illinois*, 378 U.S. 478, and *Miranda* v. *State of Arizona*, 384 U.S. 436, and then questioned him in a police dominated atmosphere about the shooting for which he was under arrest.

Certainly it cannot be argued that after the officer arrested this man the officer was still conducting a general inquiry into an unsolved crime—from the moment this petitioner was arrested, the police investigation was focused upon him and no other. In fact, the police investigation was focused on him as soon as the witness to the shooting drove by this petitioner's boarding house and pointed out his car to the police. During the time this petitioner was questioned in his bedroom, he was in police custody, under arrest, and was certainly more than a suspect. But without giving proper warnings—or any warnings at all—the police elicited from this arrested man the fact that he had been to the scene of the shooting that evening; that he did own a pistol; and the whereabouts of his pistol. When these statements of the petitioner were later erroneously admitted into evidence by the trial court, the State was thereby allowed to show the possible guilt of this petitioner as surely as if a written and signed statement saying "I did it" had been admitted.[3]

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[3] The admission into evidence of the petitioner's statements made at the time of his arrest was also strenuously argued in the state

Was the interrogation of your petitioner by the police officers an "in custody" interrogation? On this question, in *Miranda, supra,* at page 444, this Court stated that: "By custodial interrogation, we mean questioning initiated by law enforcement officers after a person *has been taken into custody or otherwise deprived of his freedom of action in any significant way.*" (Emphasis added.) At this point, the Court added a footnote saying, "This is what we meant in *Escobedo* when we spoke of investigation which is focused on an accused." Looking again at the case at bar, we find police had entered the bedroom uninvited of this petitioner; there were four police officers standing around his bed; he was under arrest; the interrogation began—*"Where is it, and he didn't answer at first. Then I asked him again . . ."* (R. 85). Even though this petitioner did

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court, based upon Article 38.22 of the Texas Code of Criminal Procedure which requires that an oral or written confession of a defendant, taken while the defendant is in the custody of an officer, shall be admissible only if made in the presence of an examining court, or else it must be in writing and signed by the accused and the defendant must have, prior to making the statement, waived his right to have a lawyer present and been told that if he cannot afford an attorney one will be appointed to represent him and further that he may remain silent and that any statement he makes may be used in evidence against him at his trial.

Article 38.22 (f) makes an exception to the inadmissibility of a confession when the confession is in the form of a *res gestae* statement. In regard to the question as to whether or not the statements made by this petitioner were *res gestae* the Texas Court of Criminal Appeals has consistently held that such statements must be spontaneous and not in answer to questions propounded by the arresting officers. In *Rubenstein* v. *State,* 407 S.W. 2d 795, this court stated that "the test in this state is spontaneity and these facts do not fit that case." Also see *Grimmel* v. *State,* 355 S.W. 2d 614, wherein the Court of Criminal Appeals ruled that "statement made by the defendant, while under arrest, after he had certain currency and told the police officers 'Well, I guess you've got me' or something to that effect, tended to show an admission of guilt and was therefore not admissible."

not want to answer, the interrogation continued in the bedroom while in the custody of four police officers. Answers were elicited from this petitioner, who still had sleep in his eyes, without his having been told of his right to remain silent or his right to have an attorney present if he so chose.

To quote again from *Miranda, supra:*

> *"Likewise, if the individual is alone and indicates in any manner that he does not wish to be interrogated,* the police may not question him. The mere fact that he may have answered some questions or volunteered some statements on his own, does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned." (Emphasis added.)

From the foregoing, it may be seen that the trial court erred by admitting illegally obtained evidence, i.e., the statement that the defendant had been to the cafe the night of the shooting; the statement that the defendant did own a pistol and its whereabouts; and the admitting into evidence of the ballistics tests performed on this pistol.

Conclusion

In consideration of the above and foregoing, your petitioner respectfully requests that this Honorable Court enter an order remanding the case to the trial court for a prompt new trial and specifying that the statement made by your petitioner without proper warning, the testimony regarding the finding of the pistol and where it was found, and the results of the ballistics tests subsequently performed upon the pistol be prohibited from being introduced into evidence on a new trial on the merits.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1968

NO. 641

REYES ARIAS OROZCO,
Petitioner

v.

THE STATE OF TEXAS,
Respondent

On Petition for Writ of Certiorari to
The Court of Criminal Appeals of Texas

BRIEF FOR RESPONDENT

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BRIEF FOR RESPONDENT

OPINION BELOW

The opinion of the Texas Court of Criminal Appeals, which is sought to be reviewed by Petitioner, is not yet reported. The opinion was delivered on December 6, 1967, Opinion No. 40,706, and is reproduced in the Appendix.

JURISDICTION

Respondent does not question the jurisdictional allegations as set forth in the Petition.

CONSTITUTIONAL PROVISIONS INVOLVED

The pertinent constitutional provisions are set forth in the Petition.

QUESTIONS PRESENTED

Respondent has no particular quarrel with the statement of "Question Presented" by Petitioner except the question of the legality of the arrest, the interrogation, the search, and the admission into evidence of physical objects seized must be considered in the light of Petitioner's failure to object specifically to the tender into evidence of the results of the arrest, questioning and search.

The central question posed by this certiorari proceeding is the application of *Miranda v. Arizona,* 384 U.S. 436 (1966), to the facts and circumstances of this case.

STATEMENT OF THE CASE

Petitioner's Statement of the Case is substantially correct although apparently Petitioner was not "awakened by the detectives," but was already awake when the officers entered his room. (Appendix 14.)

ARGUMENT

Miranda v. Arizona, Supra, Does Not Apply To The Facts Of This Case And The Questioning Of Petitioner By The Police At The Time Of His Arrest Was Constitutionally Permissable.

The facts show that the Petitioner shot and killed one John Hugh Elliott outside the El Farleto Cafe in Dallas, Texas, shortly after midnight on January 5, 1966. Police investigation during the early morning hours of January 5 located Petitioner's companion at the time of the shooting, who in turn revealed to the officers where Petitioner lived. (See pages 48-51 of the Statement of Facts of the testimony at the state trial

which forms a part of the Record before this Court; the Statement of Facts is hereinafter referred to as S/F —,). The officers after delivering the witness to the police station, returned to the house where Petitioner resided and were admitted with the consent of an unidentified woman at the house. (Appendix 13; S/F 54, 55.) This woman also indicated the room where Petitioner could be found. (Appendix 14; S/F-55, 56.)

The officers then proceeded to interview Petitioner, the pertinent parts of the interview being reproduced at pages 15 through 17 of the Appendix. (See also S/F 57, 58.) It should be noted that after the Petitioner had given his name he was placed under arrest and the ensuing questions were directed to him after he was in custody. (Appendix 17; S/F 60.)

While Petitioner questions the validity of the arrest itself in Footnote 2, Page 6 of Brief of Petitioner, Respondent says that the arrest was unquestionably proper in the Constitutional sense. Observation is made that the Texas requirement that an arrest without a warrant is legal, only when Petitioner is about to escape, is not of constitutional dimension, as most jurisdictions permit an arrest without a warrant, upon a showing of probable cause, without reference to the possibility of escape. See Section 6, subsection b (2) of the Article on Arrest in Corpus Juris. Secundum, 6 C.J.S., 586-588, which discuss the general rule and the Texas exception. Any definition of the "impending escape" requirement of the Texas law should be left for the Texas courts to determine.

Respondent, therefore, reasserts that the only pertinent question for review is the applicability of *Mi-*

randa v. Arizona, supra, to the interrogation of the Petitioner after his arrest.

It should first be noted that the interrogation did not take place at the police station but in surroundings familiar to the Petitioner. In this, the present situation is distinguishable from *Miranda.*

Second, and more important, there was no specific objection made by Petitioner to the testimony of the arresting officer concerning the questions put to the Petitioner and the responses made thereto. See the testimony as set out at pages 15 through 17 of the Appendix. Only a general objection was imposed, and the court's attention was not specifically directed to the case of *Miranda v. Arizona,* supra, and to the fact that the in custody interrogation was conducted in the absence of the warning made mandatory by *Miranda.* (Appendix 17.)

Article 40.09 (6) (c) of the Code of Criminal Procedure of Texas requires that an objection made to any action of the court should specify the "grounds therefor." The necessity of a specific objection as opposed to a general objection is discussed in Sections 24, 25 and 26 of *Texas Law of Evidence* by McCormick and Ray.

A specific objection permits the judge to understand the precise question concerning the evidence objected to, and thereby make an intelligent ruling concerning the objection. This requirement promotes orderly state trials and presents an adequate state ground for denial of relief in this case. *Henry v. Mississippi,* 379 U.S. 443 (1965). The specific objection rule of evidence comes within the philosophy expressed in *Spencer v.*

Texas, 385 U.S. 554 (1966), when this Court refused to impose its own evidentiary standards upon the state courts, stating at pages 568 and 569 of the opinion, that this

> ". . . would be wholly unjustifiable encroachment by this Court upon the constitutional power of States to promulgate their own rules of evidence to try their own state-created crimes in their own state courts, so long as their rules are not prohibited by any provision of the United States Constitution. . . ."

CONCLUSION

For the reasons stated above, Respondent says that the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Lonny F. Zwiener, Assistant Attorney General of Texas, certify that a copy of the foregoing Respondent's Brief was served on the Attorney for Petitioner, by depositing same in the United States Mail, postage prepaid, certified mail, addressed to Mr. Charles M. Tessmer, Lawyer's Building, 706 Main Street, Suite 400, Dallas, Texas 75202, on this the ____ day of January, 1969.

LONNY F. ZWIENER
Assistant Attorney General

SUPREME COURT OF THE UNITED STATES

No. 641.—October Term, 1968.

Reyes Arias Orozco, Petitioner, v. State of Texas	On Writ of Certiorari to the Court of Criminal Appeals of Texas.

[March 25, 1969.]

Mr. Justice Black delivered the opinion of the Court.

The petitioner, Reyes Arias Orozco, was convicted in the Criminal District Court of Dallas County, Texas, of murder without malice and was sentenced to serve in the state prison not less than two nor more than 10 years. The Court of Criminal Appeals of Texas affirmed the conviction, rejecting petitioner's contention that a material part of the evidence against him was obtained in violation of the provision of the Fifth Amendment to the United States Constitution, made applicable to the States by the Fourteenth Amendment, that "No person . . . shall be compelled in any criminal case to be a witness against himself." [1]

The evidence introduced at trial showed that petitioner and the deceased had quarreled outside the El Farleto Cafe in Dallas shortly before midnight. The deceased had apparently spoken to petitioner's female companion inside the restaurant. In the heat of the quarrel outside, the deceased is said to have beaten petitioner about the face and called him "Mexican Grease." A shot was fired killing the deceased. Petitioner left the scene and returned to his boarding house to sleep. At about 4 a. m. four police officers arrived at petitioner's boarding house, were admitted by an unidentified woman, and were told that petitioner was asleep in the bedroom. All four

[1] The state court also rejected a contention that use of the evidence also violated the Fourth Amendment's provision against unreasonable searches and seizures. Our holding makes it unnecessary for use to consider that contention.

officers entered the bedroom and began to question petitioner. From the moment he gave his name, according to the testimony of one of the officers, petitioner was not free to go where he pleased but was "under arrest." The officers asked him if he had been to the El Farleto restaurant that night and when he answered "yes" he was asked if he owned a pistol. Petitioner admitted owning one. After being asked a second time where the pistol was located, he admitted that it was in the washing machine in a backroom of the boarding house. Ballistics tests indicated that the gun found in the washing machine was the gun that fired the fatal shot. At petitioner's trial, held after the effective date [2] of this Court's decision in *Miranda* v. *Arizona*, 384 U. S. 436 (1966), the trial court allowed one of the officers, over the objection of petitioner's lawyer,[3] to relate the statements made by petitioner concerning the gun and petitioner's presence at the scene of the shooting. The trial testimony clearly shows that the officers questioned petitioner about incriminating facts without first informing him of his right to remain silent, his right to have the advice of a lawyer before making any statement, and his right to have a lawyer appointed to assist him if he could not afford to hire one. The Texas Court of Criminal Appeals held, with one judge dissenting, that the admission of testimony concerning the statements petitioner had made without the above warnings was not precluded by *Miranda*. We disagree and hold that the use of these admissions obtained in the absence

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[2] See *Johnson* v. *New Jersey*, 384 U. S. 719 (1966).

[3] The State appears to urge that petitioner's *Miranda* claim is unreviewable in this Court because the objection made by trial counsel to the officer's testimony was not sufficiently "specific." We fail to perceive how this could be an adequate state ground in view of the fact that the Texas Court of Criminal Appeals specifically decided that the introduction of petitioner's statement made to the officers "was not precluded under *Miranda* v. *Arizona*" while the dissenting judge thought that it was.

of the required warnings was a flat violation of the Self-Incrimination Clause of the Fifth Amendment as construed in *Miranda*.

The State has argued here that since petitioner was interrogated on his own bed, in familiar surroundings, our *Miranda* holding should not apply. It is true that the Court did say in *Miranda* that "compulsion to speak in the isolated setting of the police station may be greater than in courts or other official investigations where there are often impartial observers to guard against intimidation or trickery." 384 U. S. 436, 461. But the opinion iterated and reiterated the absolute necessity for officers interrogating people "in custody" to give the described warnings. See *Mathis* v. *United States*, 391 U. S. 1 (1968). According to the officer's testimony, petitioner was under arrest and not free to leave when he was questioned in his bedroom in the early hours of the morning. The *Miranda* opinion declared that the warnings were required when the person being interrogated was "in custody at the station *or otherwise deprived of his freedom of action in any way.*" 384 U. S. 436, 477. (Emphasis supplied.) The decision of this Court in *Miranda* was reached after careful consideration and was announced in lengthy opinions by both the majority and dissenting Justices. There is no need to recanvass those arguments again. We do not, as the dissent implies, expand or extend to the slightest extent our *Miranda* decision. We do adhere to our well-considered holding in that case and therefore reverse[4] the conviction below.

Reversed.

MR. JUSTICE FORTAS took no part in the consideration or decision of this case.

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[4] In light of some apparent misunderstanding on this point, it is perhaps appropriate to point out once again that a reversal by this Court of a conviction based in part on unconstitutional evidence leaves the State free to retry the defendant without the tainted evidence.

SUPREME COURT OF THE UNITED STATES

No. 641.—October Term, 1968.

Reyes Arias Orozco, Petitioner, v. State of Texas.	On Writ of Certiorari to the Court of Criminal Appeals of Texas.

[March 25, 1969.]

Mr. Justice Harlan, concurring.

The passage of time has not made the *Miranda* case any more palatable to me than it was when the case was decided. See my dissenting opinion, and that of Mr. Justice White, in *Miranda* v. *Arizona*, 384 U. S. 436, 504, 526 (1966).

Yet, despite my strong inclination to join in the dissent of my Brother White, I can find no acceptable avenue of escape from *Miranda* in judging this case, especially in light of *Mathis* v. *United States*, 391 U. S. 1 (1968), which has already extended the *Miranda* rules beyond the police station, over the protest of Justices Stewart, White, and myself, *id.*, at 5–8. Therefore, and purely out of respect for *stare decisis*, I reluctantly feel compelled to acquiesce in today's decision of the Court, at the same time observing that the constitutional condemnation of this perfectly understandable, sensible, proper, and indeed commendable piece of police work highlights the unsoundness of *Miranda*.

SUPREME COURT OF THE UNITED STATES

No. 641.—October Term, 1968.

Reyes Arias Orozco, Petitioner, v. State of Texas.	On Writ of Certiorari to the Court of Criminal Appeals of Texas.

[March 25, 1969.]

Mr. Justice White, with whom Mr. Justice Stewart joins, dissenting.

This decision carries the rule of *Miranda* v. *Arizona*, 384 U. S. 436 (1966), to a new and unwarranted extreme. I continue to believe that the original rule amounted to a "constitutional straitjacket" on law enforcement which was justified neither by the words or history of the Constitution, nor by any reasonable view of the likely benefits of the rule as against its disadvantages. 384 U. S., at 526. Even accepting *Miranda*, the Court extends the rule here and draws the straitjacket even tighter.

The opinion of the Court in *Miranda* was devoted in large part to an elaborate discussion of the subtle forms of psychological pressure which could be brought to bear when an accused person is interrogated at length in unfamiliar surroundings. The "salient features" of the cases decided in *Miranda* were "incommunicado interrogation of individuals in a police-dominated atmosphere." 384 U. S., at 445. The danger was that in such circumstances the confidence of the prisoner could be eroded by techniques such as successive interrogations by police acting out friendly or unfriendly roles. These techniques are best developed in "isolation and unfamiliar surroundings," 384 U. S., at 450. And they take time: "the major qualities an interrogator should possess are patience and perseverance." 384 U. S., at 450. The techniques of an extended period of isolation, repeated

interrogation, cajolery, and trickery often enough produced admissions which were actually coerced in the traditional sense so that new safeguards were deemed essential.

It is difficult to believe that the requirements there laid down were essential to prevent compulsion in every conceivable case of station house interrogation. Where the defendant himself as a lawyer, policeman, professional criminal, or otherwise has become aware of what his right to silence is, it is sheer fancy to assert that his answer to every question asked him is compelled unless advised of those rights with which he is already intimately familiar. If there is any warrant to *Miranda* at all, it rests on the likelihood that in a sufficient number of cases exposure to station house practices will result in compelled confessions and that additional safeguards should be imposed in all cases to prevent possible erosion of Fifth Amendment values. Hence, the detailed ritual which *Miranda* fashioned.

The Court now extends the same rules to all instances of in-custody questioning outside the station house. Once arrest occurs, the application of *Miranda* is automatic. The rule is simple but it ignores the purpose of *Miranda* to guard against what was thought to be the corrosive influence of practices which station house interrogation makes feasible. The Court wholly ignores the question whether similar hazards exist or even are possible when police arrest and interrogate on the spot, whether it be on the street corner or in the home, as in this case. No predicate is laid for believing that practices outside the station house are normally prolonged, carried out in isolation, or often productive of the physical or psychological coercion made so much of in *Miranda*. It is difficult to imagine the police duplicating in a person's home or on the street those conditions and practices which the Court found prevalent in the station house

and which were thought so threatening to the right to silence. Without such a demonstration, *Miranda* hardly reaches this case or any cases similar to it.

Here, there was no prolonged interrogation, no unfamiliar surroundings, no opportunity for the police to invoke those procedures which moved the majority in *Miranda*. In fact, the conversation was by all accounts a very brief one. According to uncontradicted testimony, petitioner was awake when the officers entered his room, and they asked him four questions: his name, whether he had been at the El Farleto, whether he owned a pistol, and where it was. He gave his name, said he had been at the El Farleto, and admitted he owned a pistol without hesitation. He was slow in telling where the pistol was, and the question was repeated. He then took the police to the nearby washing machine where where the gun was hidden.

It is unquestioned that this sequence of events in their totality would not constitute coercion in the traditional sense or lead any court to view the admissions as involuntary within the meaning of the rules by which we even now adjudicate claims of coercion relating to pre-*Miranda* trials. And, realistically, had Orozco refused to answer the questions asked of him, it seems most unlikely that prolonged interrogation would have followed in petitioner's own quarters; nothing similar to the station house model invoked by the court would have occurred here. The police had petitioner's name and description, had ample evidence that he had been at the night club and suspected that he had a gun. Surely had he refused to give his name or answer any other questions, they would have arrested him anyway, searched the house and found the gun, which would have been clearly admissible under all relevant authorities. But the Court insists that this case be reversed for failure to give *Miranda* warnings.

I cannot accept the dilution of the custody requirements of *Miranda* to this level, where the hazards to the right to silence are so equivocal and unsupported by experience in a recurring number of cases. Orozco was apprehended in the most familiar quarters, the questioning was brief, and no admissions were made which were not backed up by other evidence. This case does not involve the confession of an innocent man, or even of a guilty man from whom a confession has been wrung by physical abuse or the modern psychological methods discussed in *Miranda*. These are simply the terse remarks of a man who has been caught, almost in the act. Even if there were reason to encourage suspects to consult lawyers to tell them to be silent before quizzing at the station house, there is no reason why police in the field should have to preface every casual question of a suspect with the full panoply of *Miranda* warnings. The same danger of coercion is simply not present in such circumstances, and the answers to the questions may as often clear a suspect as help convict him. If the *Miranda* warnings have their intended effect, and the police are able to get no answers from suspects, innocent or guilty, without arresting them, then a great many more innocent men will be making unnecessary trips to the station house. Ultimately it may be necessary to arrest a man, bring him to the police station, and provide a lawyer, just to discover his name. Even if the man is innocent the process will be an unpleasant one.

Since the Court's extension of *Miranda*'s rule takes it into territory where even what rationale there originally was disappears, I dissent.

SUPREME COURT OF THE UNITED STATES

No. 641.—October Term, 1968.

Reyes Arias Orozco, Petitioner, *v.* State of Texas.	On Writ of Certiorari to the Court of Criminal Appeals of Texas.

[March 25, 1969.]

Memorandum of Mr. Justice Stewart.

Although there is much to be said for Mr. Justice Harlan's position, I join my Brother White in dissent. It seems to me that those of us who dissented in *Miranda* v. *Arizona*, 384 U. S. 436, remain free not only to express our continuing disagreement with that decision, but also to oppose any broadening of its impact.